

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SPRINT SPECTRUM L.P.; SPRINT
SPECTRUM REALTY COMPANY, L.P.

Plaintiffs,

v.

COUNTY OF SAN MATEO; BOARD OF
SUPERVISORS FOR THE COUNTY OF SAN
MATEO; MARK CHURCH; JERRY HILL;
RICH GORDON; ROSE GIBSON;
ADRIENNE TISSIER; and DOES 1
through 10,

Defendants.

No. C-08-00342 CW

ORDER DENYING AS MOOT
DEFENDANTS' MOTION TO DISMISS

On March 13, 2008, Defendants County of San Mateo, Board of Supervisors for the Country of San Mateo, Mark Church, Jerry Hill, Rich Gordon, Rose Gibson and Adrienne Tissier moved to dismiss the Fourth Claim of the Complaint filed by Plaintiffs Sprint Spectrum L.P. and Sprint Spectrum Realty Company, L.P. On May 29, 2008, Plaintiffs filed an amended complaint, and on June 9, 2008, Defendants County of San Mateo, Board of Supervisors for the County of San Mateo, Mark Church, Jerry Hill, Rich Gordon, Rose Gibson and Adrienne Tissier answered the amended complaint. Rule 15(a) of the

1 Federal Rules of Civil Procedure provides, "A party may amend the
2 party's pleading once as a matter of course at any time before a
3 responsive pleading is served." A motion to dismiss is not a
4 "responsive pleading" within the meaning of Rule 15. CRST Van
5 Expedited, Inc. v. Werner Enters., Inc., 479 F.3d 1099, 1104 n.3
6 (9th Cir. 2007); Crum v. Circus Circus Enters., 231 F.3d 1129, 1130
7 n.3 (9th Cir. 2000). Because Defendants' motion to dismiss (Docket
8 No. 14) is not directed at the operative pleading, it is DENIED
9 without prejudice as moot. The Case Management Conference will be
10 held as scheduled on June 19, 2008 at 2:00 p.m. A joint Case
11 Management Statement will be due one week prior to the conference.

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14 IT IS SO ORDERED.

15 Dated: 6/11/08



CLAUDIA WILKEN
United States District Judge